

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF OHIO  
EASTERN DIVISION

LUIS A. ROMAN,	)	CASE NO. 1:11 CV 885
Plaintiff,	)	JUDGE PATRICIA A. GAUGHAN
v.	)	
BRIAN CAIN, et al.,	)	<u>MEMORANDUM OF OPINION</u>
Defendants.	)	<u>AND ORDER</u>

**Introduction**

On May 4, 2011, Plaintiff *pro se* Luis A. Roman filed this *in forma pauperis* action under 42 U.S.C. § 1983 against the Ohio Department of Rehabilitation and Correction, Brian Cain and Dr. Granson. For the reasons stated below, this action is dismissed pursuant to 28 U.S.C. § 1915(e).

**Facts**

The Complaint is very brief. Plaintiff is an inmate at the Richland Correctional Institution (“RICI”) in Mansfield, Ohio. He alleges he fell on ice outside of Chow Hall there and injured his back, neck and shoulder. The fall was a “result of negligence.” (Doc. 1, p.4). Plaintiff further alleges he is now constantly in pain because of the deliberate indifference of the medical staff at RICI, who are under the direction of Brian Cain and Dr. Granson. Finally, it is alleged Plaintiff is the subject of racial prejudice and profiling because he is Hispanic and speaks broken English. He seeks damages, an order requiring he be provided medications other than over the counter drugs, and an evaluation and treatment at the Ohio State Medical Center.

### **Standard of Review**

Although *pro se* pleadings are liberally construed, *Boag v. MacDougall*, 454 U.S. 364, 365 (1982) (per curiam); *Haines v. Kerner*, 404 U.S. 519, 520 (1972), the district court is required to dismiss an action under 28 U.S.C. § 1915(e) if it fails to state a claim upon which relief can be granted, or if it lacks an arguable basis in law or fact.<sup>1</sup> *Neitzke v. Williams*, 490 U.S. 319 (1989); *Lawler v. Marshall*, 898 F.2d 1196 (6th Cir. 1990); *Sistrunk v. City of Strongsville*, 99 F.3d 194, 197 (6<sup>th</sup> Cir. 1996).

### **Discussion**

Under Federal Rule of Civil Procedure 8(a)(2), a pleading must contain a “short and plain statement of the claim showing that the pleader is entitled to relief.” *Ashcroft v. Iqbal*, 129 S.Ct. 1937, 1949 (2009). The pleading standard Rule 8 announces does not require “detailed factual allegations,” but it demands more than an unadorned, the-defendant-unlawfully-harmed-me accusation. *Id.* A pleading that offers “labels and conclusions” or “a formulaic recitation of the elements of a cause of action will not do.” *Id.* Nor does a complaint suffice if it tenders naked assertion devoid of further factual enhancement. *Id.* It must contain sufficient factual matter, accepted as true, to “state a claim to relief that is plausible on its face.” *Id.* A claim has facial plausibility when the plaintiff pleads factual content that allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged. *Id.* The plausibility standard is not akin to a “probability requirement,” but it asks for more than a sheer possibility that a defendant has acted unlawfully. *Id.* Where a complaint pleads facts that are “merely consistent with” a defendant's liability, it “stops short of the line between possibility and plausibility of ‘entitlement to relief.’ ”

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<sup>1</sup> A claim may be dismissed *sua sponte*, without prior notice to the plaintiff and without service of process on the defendant, if the court explicitly states that it is invoking section 1915(e) [formerly 28 U.S.C. § 1915(d)] and is dismissing the claim for one of the reasons set forth in the statute. *McGore v. Wrigglesworth*, 114 F.3d 601, 608-09 (6<sup>th</sup> Cir. 1997); *Spruytte v. Walters*, 753 F.2d 498, 500 (6<sup>th</sup> Cir. 1985), *cert. denied*, 474 U.S. 1054 (1986); *Harris v. Johnson*, 784 F.2d 222, 224 (6<sup>th</sup> Cir. 1986); *Brooks v. Seiter*, 779 F.2d 1177, 1179 (6<sup>th</sup> Cir. 1985).

*Id.* As a threshold matter, any claim related to Plaintiff's fall on the ice asserts negligence at most. Negligence cannot form the basis for a Section 1983 action. *Daniels v. Williams*, 474 U.S. 327 (1986). Further, to establish a claim for inadequate medical care under the Eighth Amendment, Plaintiff must demonstrate that Defendants acted with deliberate indifference to his serious medical needs. *Farmer v. Brennan*, 511 U.S. 825, 835 (1994). An official acts with deliberate indifference when "he acts with criminal recklessness," a state of mind that requires conscious disregard of a substantial risk of serious harm. *Id.* at 837. Mere negligence will not suffice. *Id.* at 835-36. Consequently, allegations of medical malpractice, negligent diagnosis, or negligent treatment fail to state an Eighth Amendment claim. Moreover, where a prisoner has received some medical attention and the dispute is over the adequacy of the treatment, "federal courts are generally reluctant to second guess medical judgments and to constitutionalize claims which sound in state tort law." *Westlake v. Lucas*, 537 F.2d 857, 860 n. 5. (6<sup>th</sup> Cir. 1976).

Prison officials may not deprive inmates of "the minimal civilized measure of life's necessities." *Rhodes v. Chapman*, 452 U.S. 337, 347 (1981). The Supreme Court in *Wilson v. Seiter*, 501 U.S. 294, 298 (1991), set forth a framework for courts to use when deciding whether certain conditions of confinement constitute cruel and unusual punishment prohibited by the Eighth Amendment. A plaintiff must first plead facts which, if true, establish an objective component that a sufficiently serious deprivation has occurred. *Id.* at 2324. Seriousness is measured in response to "contemporary standards of decency." *Hudson v. McMillian*, 112 S. Ct. 995, 1000 (1992). Routine discomforts of prison life do not suffice. *Id.* Only deliberate indifference to serious medical needs or extreme deprivations regarding the conditions of confinement will implicate the protections of the Eighth Amendment. *Id.* at 1000. Plaintiff must also establish a subjective element showing the prison officials acted with a sufficiently culpable state of mind. *Id.* A prison official violates the Eighth Amendment only when both the objective and subjective requirements are met. *Farmer v. Brennan*, 511 U.S. 825, 834 (1994). Plaintiff fails to allege such.

Finally, Plaintiff's claim of race discrimination is unsupported. For example, there is no

allegation he has been treated differently than other inmates.

Given the Complaint's conclusory nature, it simply does not contain allegations reasonably suggesting Plaintiff has a valid claim under the foregoing standards. *See, Lillard v. Shelby County Bd. of Educ.*, 76 F.3d 716 (6<sup>th</sup> Cir. 1996)(court not required to accept summary allegations or unwarranted legal conclusions in determining whether complaint states a claim for relief).

**Conclusion**

Accordingly, this action is dismissed under section 1915(e). Further, the Court certifies, pursuant to 28 U.S.C. § 1915(a)(3), that an appeal from this decision could not be taken in good faith.

IT IS SO ORDERED.

/s/ Patricia A. Gaughan  
PATRICIA A. GAUGHAN  
UNITED STATES DISTRICT JUDGE

Dated: 8/29/11